

**MINUTES**  
**IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND**  
**PROGRAM**

**May 27, 2008**

**COMMISSIONER'S CONFERENCE ROOM**  
**IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET**  
**DES MOINES, IOWA**

Susan Voss, Chairperson, called the Iowa UST Board meeting teleconference to order at 10:03 A.M. A quorum was present. Roll call was taken with the following Board member participants:

Jacqueline Johnson  
Nancy Lincoln  
Tim Hall (for Richard Leopold)  
Doug Beech  
Jim Holcomb  
Stephen Larson (for Michael Fitzgerald)  
Jeff Robinson

Other discussion participants:

Angela Burke-Boston, Deputy Insurance Commissioner  
David Steward, Attorney General's Office  
Scott Scheidel, Program Administrator  
Lacey Skalicky, Administrator's Office  
Brian Tormey, Iowa Department of Natural Resources  
Elaine Douskey, Iowa Department of Natural Resources  
Barb Lynch, Iowa Department of Natural Resources  
Dave Wornson, Iowa Department of Natural Resources

The purpose of the teleconference meeting of the Iowa UST Fund Board was to complete discussions regarding the 28E agreement for UST Section funding from the Iowa Department of Natural Resources (DNR), due to time constraints at the May 22, 2008 meeting.

## **BOARD ISSUE**

### **A. 28E Agreement – DNR Funding FY08-FY09**

Mr. Scheidel provided the Board with a copy of a draft of the 28E agreement between the Iowa UST Fund Board and the DNR to provide DNR with funding from the Iowa UST Fund to meet their fiscal year budgets for fiscal years 2008 & 2009. Mr. Scheidel began the discussion with an explanation of the history of the DNR funding agreements which had only begun in recent years. He explained that the DNR had received extra funding in years past from the United States Environmental Protection Agency (USEPA), and when that bonus funding ended the DNR requested assistance from the Iowa UST Fund Board. The first agreement involved funding of nearly \$700,000 in exchange for DNR action with regard to the start up of the third party inspection program – a program to train and certify third parties to complete UST site compliance inspections to remedy some inefficiencies within the DNR itself. The next fiscal year agreement involved the DNR receiving \$400,000 in exchange for accepting the responsibility of the UST installer/inspector program in rule and in practice, as UST compliance was no longer a Board concern with regard to its mission to the same degree it had been when the State ran an insurance program. Mr. Scheidel made note of the fact that the DNR had not approached the Administrator's Office about FY08 funding until very recently. He explained that after he advised DNR that no funding agreement for FY08 was in place as of November 2007, the DNR responded with a memorandum of understanding that the Board would "pay back" the 77% of tank tag fees to the DNR each year, so long as the Board was in place. Mr. Scheidel stated that he requested the DNR negotiate a 28E agreement with the Board instead of a memorandum of understanding. The 28E draft provided to the Board involved payment of the equivalent of the 77% of the tank management fees received in fiscal years 2008 & 2009 to the DNR in exchange for DNR providing the Board with reports regarding DNR UST Section activity.

Mr. Scheidel referenced the budget constraints presented by new legislation with regard to bond payoff and defeasance and diversion of funds to ATV and snowmobile funds.

Ms. Voss referenced an electronic mail memo that was forwarded to Board members from Elaine Douskey. In response to a question from Mr. Holcomb, Ms. Douskey stated that the UST Section had created its FY08 budget to include \$400,000 from the UST Fund by agreement. She stated the current shortfall within the Department was approximately \$344,000, and was expected to reach \$400,000 by the end of the State fiscal year. Also, she stated that the first year the Board and DNR entered into a funding agreement, the DNR received \$400,000 plus another \$300,000 expressly for the development of the third party inspection program to lessen DNR staff responsibilities and DNR staff was reduced by 3 full time employees as a result. Mr. Beech inquired why there was not a corresponding decrease in the amount of funding assistance needed. And if the amount of funding assistance needed was to remain at approximately \$400,000, he inquired about what milestones had the DNR met to that end. Ms. Douskey responded that the DNR Field Offices (FO's) were required to perform audits on 10% of all UST sites in Iowa each year.

To clarify, Barb Lynch from the DNR Field Office reported FO activity to the Board in recent years. She noted the FO staff completed 246 UST inspections in FY07, as well as, 64 audits. The FO staff was expected to begin audits in FY08; however FO staff began audits in January 2007, as Petroleum Marketers Management Insurance Company (PMMIC) began completing third party inspections at that time. Therefore, FY08 activity to date (3 quarters including 7/1/07 – 3/31/08) included 4 UST inspections and 198 audits completed by FO staff. She reported on the transition for staff from performing inspections to audits was a learning process for staff. Also, the audits involved some review of the inspections themselves, which took some time.

Ms. Lynch also discussed other FO responsibilities including LUST inspections (96 completed), which involves the inspection of a leaking UST site to obtain verification of on-going remediation activities (i.e. systems running, free product recovery activities, etc.). Additionally, she explained that FO staff performs deficiency inspections (104) which are follow-up visits to audits or previous violations (NOV-Notice of Violation), which had resulted in deficiencies, to verify resolution. Also, she noted that NOV's (36), which can evolve into referrals (4) to DNR's legal department or to Attorney General's Office, are time-consuming cases in which the FO staff remains involved through to resolution. Ms. Lynch reported that LUST/UST operators request assistance (655) from the FO staff for a variety of reasons, which warrant site visits and correspondence, and UST/LUST complaints (38) require similar time and effort. Lastly, she noted that FO staff had been allowed more time to be present for UST removals (25), an oversight which had always been a DNR responsibility in rule but unattainable in practice due to time issues.

Mr. Beech indicated that he wanted to maintain focus on accountability to LUST issues. Mr. Scheidel expanded saying that past funding agreements included milestones reflecting Board interests, and this year's agreement could include milestones relative to the Board's mission of resolving LUST issues. Ms. Douskey responded stating that the UST/LUST Section had many more meetings with the FO's than in years past in order to orient and train the FO staff on LUST issues and increase their LUST involvement to include participation in corrective action meetings.

Dave Wornson added that DNR staff was currently developing an enforcement plan for all UST sites that had yet to be inspected by a third party, and therefore were out of compliance with the requirements. He noted that FO staff would have to go out and complete those inspections, and there were hundreds to be completed. Additionally, 27 sites involved in a pending lawsuit would soon require FO staff inspections for all 27 sites. Mr. Beech inquired about civil penalties and fines to pay for those inspections. Ms. Lynch informed the Board that civil fines and penalties regarding UST sites were payable to the General Fund only. Mr. Wornson noted that one DNR enforcement on UST operators included fuel delivery prohibition.

Mr. Scheidel inquired how the FO staff could help out the Board with its most problematic sites, which include non-operating UST sites with innocent landowners who don't want to move forward. Mr. Beech restated that without an increase in LUST-related services from the DNR, he had expected to see a reduction in the requested assistance to the DNR.

Mr. Hall reminded all that the source of the requested funding was generated by UST fees – UST management fees. Mr. Beech agreed that was true.

Mr. Scheidel suggested that, because the bond payoff and defeasance by 7/1/08 releases the bond requirement of 77% of tank tag management fees, then the Board agree to assist the DNR with its FY08 shortfall, and then work with the DNR to develop a legislative package during FY09 to propose to lawmakers that they allow DNR to keep the 77% of tank fees allotted to the UST Fund in the place of the statutory \$200,000 of annual DNR funding from the UST Fund. Additionally, the parties could work on a contingency agreement for FY09, if the legislative package goes off course during session. And he explained that any financial assistance the DNR would need beyond the Board's 77% of tank management fees could be the subject of future 28E agreements.

Mr. Beech reiterated his disappointment that the third party inspection program implementation had not generated any reduction in funding requested, and Mr. Scheidel stated that he had been more focused on attaining more LUST-related services from the DNR in exchange for the requested funding. Ms. Douskey pointed out that she could not recall discussing a change in service from FO staff with Mr. Scheidel previously.

Mr. Wornson noted that the transition from DNR inspections to third party inspections was to improve the inspection process. He explained that the tank tag fees were paid by operating facility owners to the DNR, and he previously had believed that the Board would enter into a permanent agreement to allow DNR to keep the tank fees. He noted that Mr. Scheidel wanted to negotiate milestones at that time, and so it was done, and he wondered why the funding was being negotiated yet again, forcing DNR to budget each year without the ability to count on that 77% of tank tag fees. He stated he thought all were of the idea that tank tag fees would come back to the DNR permanently at some point. He also explained that the statute regarding Board funding allowed the Board to fund DNR administrative services, and Board funding of DNR was not restricted to LUST-related services.

Mr. Beech noted that he was in favor of Mr. Scheidel's suggested compromise, and Mr. Larson agreed with the compromise, as well.

After some discussion, Mr. Beech entered a motion to authorize the Administrator and Board Counsel to negotiate a 28E agreement with DNR to provide funding assistance for FY08 up to \$400,000 to cover DNR's actual budget shortfall. The agreement must include consideration for laying out a potential legislative package and contingent funding plan by September 30, 2008; the plan may include tank tag fees remaining entirely with DNR and elimination of recurring statutory \$200,000 appropriation from IUST to DNR each year. Ms. Lincoln seconded the motion in its entirety.

Mr. Holcomb highlighted that the FY08 DNR shortfall amount could be paid from the IUST Fund, early in FY09, before the contingency (legislative package plan & back up agreement draft) was met in September. The Board members acknowledged the fact, and the Board approved the motion by a vote of 7-0.

**B. Any Other Items for Discussion**

Mr. Larson reminded the Board about the diversion of funds during the recent legislative session that would take \$1,725,000 from the IUST Fund and give some to each of the ATV and snowmobile funds. He noted that the Governor did not line item veto that diversion in light of the absence of “notwithstanding” language, and Mr. Scheidel had stated previously that the Treasurer’s Office would have to determine how to proceed with regard to the conflict of the diversion with existing law. Mr. Larson requested Mr. Scheidel and Mr. Steward meet with him to plan how the Treasurer’s Office should proceed.

Mr. Hall noted to the Board that early in the process, when the bill diverting IUST Funds to ATV’s and snowmobiles was introduced, Richard Leopold, DNR Director, instructed the DNR legislative liaison to oppose the bill even though the ATV/snowmobile management was a part of the DNR. Mr. Hall stated that Mr. Leopold received an angry response to the position from the ATV division of the Department, for the record.

Ms. Voss asked if there was any further business, and there being none, Mr. Holcomb moved to adjourn, and Ms. Johnson seconded the motion. By a vote of 7-0, the Board adjourned at 11:04 A.M.

Respectfully Submitted,

A handwritten signature in black ink, reading "Scott M. Scheidel". The signature is written in a cursive, flowing style with a large initial 'S'.

Scott M. Scheidel  
Administrator